

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PHILLIP BROWN,

Petitioner,

v.

Case No. 09-11679
Honorable Patrick J. Duggan

SHIRLEE HARRY,

Respondent.

_____ /

ORDER DENYING PETITIONER'S MOTION
FOR RELIEF FROM JUDGMENT

At a session of said Court, held in the U.S.
District Courthouse, Eastern District
of Michigan, on August 30, 2010.

PRESENT: THE HONORABLE PATRICK J. DUGGAN
U.S. DISTRICT COURT JUDGE

This matter is before the Court on Petitioner's motion for relief from judgment pursuant to Federal Rule of Civil Procedure 60(b)(1) and (2), filed August 4, 2010. In his motion, Petitioner seeks relief from the Court's July 13, 2009 denial of his motion to hold his habeas petition in abeyance and the non-prejudicial dismissal of his petition to allow him to fully exhaust his state court remedies as to his habeas claims. Petitioner contends that the Court should have held his "mixed petition" in abeyance rather than dismissing it without prejudice. Petitioner already filed a motion for reconsideration with respect to the Court's decision, which the Court denied on August 7, 2009.

Under Federal Rule of Civil Procedure 60(b), a district court may grant relief from a final judgment or order only upon a showing of one of the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
- (6) any other reason that justifies relief.

Fed. R. Civ. P. 60(b). A motion under Rule 60(b) must be made within a reasonable time, but for reasons (1) through (3) no more than one year after the entry of the judgment, order, or proceeding challenged in the motion.

Petitioner claims in his motion for relief from judgment that the Court made a mistake in denying his habeas petition, yet he did not file his motion within one year of the Court's decision. His motion, therefore, is untimely. The time limit is jurisdictional and a district court does not have discretion to extend the period of limitation. *See Mitchell v. Rees*, 261 F. App'x 825, 830 (6th Cir. 2008) (citing *Smith v. Sec'y of Health & Human Servs.*, 776 F.2d 1330, 1332-33 (6th Cir. 1985)).

Accordingly,

IT IS ORDERED, that Petitioner's motion for relief from judgment is **DENIED**.

s/PATRICK J. DUGGAN
UNITED STATES DISTRICT JUDGE

Copy to:
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